

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FANTAGRAPHICS BOOKS, INC.,

Plaintiff,

v.

EMIL FERRIS,

Defendant.

No. 2:21-cv-00802-JCC

ANSWER TO PLAINTIFF'S
COMPLAINT FOR DECLARATORY
JUDGMENT; COUNTERCLAIM FOR
BREACH OF CONTRACT AND
DECLARATORY JUDGMENT

EMIL FERRIS,

Counter-Claimant,

v.

FANTAGRAPHICS BOOKS, INC.,

Counter-Defendant.

1 This case involves a publisher, Fantagraphics, bullying its breakout star author, Emil Ferris,
2 into giving it a second book to which it is not entitled. The purpose of Fantagraphics suit is clear:
3 Fantagraphics knows Ms. Ferris, an individual author and artist, will struggle to pay legal fees for
4 this litigation. Every dollar she spends here comes directly out of her personal pocket.
5 Fantagraphics is betting this extra pressure will force Ms. Ferris to give in to its demands before it
6 is held accountable for its own breaches.

7 Fantagraphics has been taking advantage of Ms. Ferris for years. As early as 2017 she
8 began noticing anomalies with her royalty reports. She later learned that Fantagraphics is selling
9 English-language books in 13 countries outside the rights granted to it in the Publishing
10 Agreement. It has consistently underreported and underpaid her royalties even on authorized sales.
11 When she asked questions, Fantagraphics patronized her and deflected the requests. And when she
12 requested an audit—as is her right under their agreement—Fantagraphics stalled and stonewalled.

13 Fantagraphics desperately wants Ms. Ferris' next book. By its own admission, it has been
14 advertising the book for years. At first, Ms. Ferris simply had difficulty finishing the work while
15 juggling promotional events that Fantagraphics asked her to attend, which included a grueling
16 series of international tours, comic cons, and interviews. But later, Ms. Ferris suspected that
17 Fantagraphics was lying to her and underpaying her. She requested an audit to investigate these
18 issues and has been clear with Fantagraphics that she would only discuss the terms for publication
19 of Book 2 (if at all) after the accounting and resolution of any issues it uncovers. The shortest path
20 for Fantagraphics to Book 2 was to allow the auditors Ms. Ferris hired to review Fantagraphics'
21 records as the contract stipulates. If the audit revealed no issues, Ms. Ferris' concerns would have
22 been settled and the parties could have moved on. Instead, Fantagraphics fought the audit then
23 filed this lawsuit.

1 The parties' existing contract, on its face, covers only one book. Though Ms. Ferris always
2 intended there would be a second book and the parties discussed and planned for it, they never
3 negotiated the terms around its release. And after four years of Fantagraphics' breaches and
4 obfuscation, Ms. Ferris is no longer comfortable moving forward without a full accounting, and
5 sufficient additional contractual assurances and reinforcement to protect her in the event
6 Fantagraphics pulls the same tricks with Book 2.

7 For these and the other reasons set out below, Ms. Ferris requests that the Court hold
8 Fantagraphics accountable by ruling in Ms. Ferris' favor on her affirmative claims as well as
9 Fantagraphics' Declaratory Judgment claim.

10 I. ANSWER

11 Ms. Ferris denies, except where expressly admitted, each allegation in the Complaint.
12 Ms. Ferris includes the headings used in the Complaint for convenience and ease of reference only
13 and denies any allegations, assertions, or inferences contained therein.

14 1. Ms. Ferris denies that Fantagraphics has a legal right to publish Book 2 of MY
15 FAVORITE THING IS MONSTERS ("Monsters Book 2"). Ms. Ferris further denies that she
16 submitted Monsters Book 2 for publication and agreed by contract to that publication. Ms. Ferris
17 lacks sufficient information to admit or deny the remaining allegations in paragraph 1 and on that
18 basis denies them.

19 2. Ms. Ferris admits that the publication of MY FAVORITE THING IS MONSTERS
20 Book 1 ("Monsters Book 1") has generated royalties for her, although these royalty payments are
21 significantly less than what Ms. Ferris is entitled to per the parties' Publishing Agreement. Except
22 as expressly admitted, Ms. Ferris denies the remaining allegations in paragraph 2.

23 3. Ms. Ferris admits that Gary Groth is the publisher and editor of Monsters Book 1.
24 Ms. Ferris admits that Holly Bemiss was her literary agent during part of the time relevant to this
25 case. Except as expressly admitted, Ms. Ferris denies the remaining allegations in paragraph 3.
26

4. The correspondence referenced in paragraph 4 speaks for itself. Except as expressly admitted, Ms. Ferris denies the remaining allegations in paragraph 4.

II. THE PARTIES

5. Ms. Ferris lacks sufficient information to admit or deny the allegations in this paragraph and on that basis denies them.

6. Ms. Ferris denies that Monsters Book 1 is her only published book. Ms. Ferris admits the remaining allegations in paragraph 6.

III. JURISDICTION AND VENUE

7. Ms. Ferris admits that this Court has jurisdiction over this action. Except as expressly admitted, Ms. Ferris denies the remaining allegations in paragraph 7.

IV. UNDERLYING FACTS

8. Ms. Ferris denies any suggestion that the Publishing Agreement covers two books. The Parties understood that the Publishing Agreement covered only one book—Monsters Book 1. To the extent they agreed to publish Monsters Book 2, that work would require a separate publishing agreement. Ms. Ferris admits that Ms. Bemiss submitted to Mr. Groth, on Ms. Ferris' behalf, a manuscript for Monsters and that she did so on or around August 2015. Ms. Ferris lacks sufficient information to admit or deny the remaining allegations in paragraph 8 and on that basis denies them.

9. Ms. Ferris admits that she intended to write a Monsters Book 2 and, in the early days before the relationship soured, hoped that Fantagraphics would publish it. Ms. Ferris denies that the Publishing Agreement covers two books. Had the parties so intended, they could easily have amended the agreement to reflect Fantagraphics' commitment to Monsters Book 2. Keeping the agreement vague benefited Fantagraphics because it gave the company room to back out if the first book had been unsuccessful. The statement excerpted in paragraph 9 speaks for itself. Except as expressly admitted, Ms. Ferris denies the remaining allegations in paragraph 9.

1 10. Ms. Ferris admits that Fantagraphics published Monsters Book 1 in February 2017
2 with Ms. Ferris' consent. Ms. Ferris admits that the title page of Monsters Book 1 includes the
3 following text: "My Favorite Thing Is Monsters Book One." Except as expressly admitted, Ms.
4 Ferris denies the remaining allegations in paragraph 10.

5 11. The text referenced in paragraph 11 speaks for itself. Except as expressly admitted,
6 Ms. Ferris denies the remaining allegations in paragraph 11.

7 12. Paragraph 12 states legal conclusions to which no response is required. To the
8 extent a response is required, Ms. Ferris denies the allegations in paragraph 12.

9 13. Ms. Ferris denies that the Publishing Agreement applies to Monsters Book 2. Ms.
10 Ferris denies that Monsters Book 2 is "the second half of the manuscript Ms. Ferris submitted in
11 2015." Ms. Ferris denies that there was any contractually imposed publication date for Monsters
12 Book 2. To the extent that Ms. Ferris made any representations regarding target submission
13 timeframes for Monsters Book 2, those representations are not evidence of a binding legal
14 agreement. They are simply an indication that at the time, unaware of Fantagraphics burgeoning
15 and multiple breaches of the Publishing Agreement, Ms. Ferris was interested in having
16 Fantagraphics publish Monsters Book 2 if suitable terms could be reached. Ms. Ferris lacks
17 sufficient information to admit or deny the remaining allegations in paragraph 13 and on that basis
18 denies them.

19 14. To the extent Fantagraphics was granting pre-release licenses to Monsters Book 2,
20 Ms. Ferris did not understand those licenses to be part of the Publishing Agreement. To the extent
21 Ms. Ferris accepted payments attributable to Monsters Book 2, she did so with the understanding
22 that those payments were not covered by the Agreement. Ms. Ferris lacks sufficient information
23 to admit or deny the remaining allegations in paragraph 14 and on that basis denies them.

24 15. Ms. Ferris denies that there was any contractually imposed publication date for
25 Monsters Book 2. To the extent Ms. Ferris made any representations regarding target submission
26 timeframes for Monsters Book 2, those representations are not evidence of a binding legal

1 agreement. They are simply an indication that at the time, unaware of Fantagraphics burgeoning
2 and multiple breaches of the Publishing Agreement, Ms. Ferris was interested in having
3 Fantagraphics publish Book 2 if suitable terms could be reached. Ms. Ferris admits that, very early
4 in her process writing Monsters Book 2, she used the word “polish,” but that in no way suggested
5 Monsters Book 2 was covered by the Agreement or Fantagraphics otherwise had any right to
6 publish it. And Ms. Ferris communicated that she was in the process of writing Monsters Book 2
7 and that any remnant of Monsters Book 1 in Fantagraphics’ possession would not necessarily be a
8 part of Monsters Book 2. Ms. Ferris denies the remaining allegations in paragraph 15.

9 16. Ms. Ferris denies that Book 2 was already complete and denies that Book 2 was
10 under the existing Publishing Agreement. Ms. Ferris denies that there was any contractually
11 imposed publication date for Monsters Book 2. To the extent Ms. Ferris made any representations
12 regarding target submission timeframes for Monsters Book 2, those representations are not
13 evidence of a binding legal agreement. They are simply an indication that at the time, unaware of
14 Fantagraphics burgeoning and multiple breaches of the Publishing Agreement, Ms. Ferris was
15 interested in having Fantagraphics publish Book 2 if suitable terms could be reached. Ms. Ferris
16 denies the remaining allegations in paragraph 16.

17 17. Ms. Ferris denies that there was any contractually imposed publication date for
18 Monsters Book 2. To the extent Ms. Ferris made any representations regarding target submission
19 timeframes for Monsters Book 2, those representations are not evidence of a binding legal
20 agreement. They are simply an indication that at the time, unaware of Fantagraphics burgeoning
21 and multiple breaches of the Publishing Agreement, Ms. Ferris was interested in having
22 Fantagraphics publish Book 2 if suitable terms could be reached. Ms. Ferris lacks sufficient
23 information to admit or deny the remaining allegations in paragraph 17, and on that basis denies
24 them.

25 18. Ms. Ferris denies that there was any contractually imposed publication date for
26 Monsters Book 2. To the extent Ms. Ferris made any representations regarding target submission

1 timeframes for Monsters Book 2, those representations are not evidence of a binding legal
2 agreement. They are simply an indication that at the time, unaware of Fantagraphics burgeoning
3 and multiple breaches of the Publishing Agreement, Ms. Ferris was interested in having
4 Fantagraphics publish Monsters Book 2 if suitable terms could be reached. Ms. Ferris lacks
5 sufficient information to admit or deny the remaining allegations in paragraph 18, and on that basis
6 denies them.

7 19. Ms. Ferris denies that there was any contractually imposed publication date for
8 Monsters Book 2. To the extent Ms. Ferris made any representations regarding target submission
9 timeframes for Monsters Book 2, those representations are not evidence of a binding legal
10 agreement. They are simply an indication that at the time, unaware of Fantagraphics burgeoning
11 and multiple breaches of the Publishing Agreement, Ms. Ferris was interested in having
12 Fantagraphics publish Monsters Book 2 if suitable terms could be reached. Ms. Ferris lacks
13 sufficient information to admit or deny the remaining allegations in paragraph 19, and on that basis
14 denies them.

15 20. Ms. Ferris denies that there was any contractually imposed publication date for
16 Monsters Book 2. To the extent Ms. Ferris made any representations regarding target submission
17 timeframes for Monsters Book 2, those representations are not evidence of a binding legal
18 agreement. They are simply an indication that at the time, unaware of Fantagraphics burgeoning
19 and multiple breaches of the Publishing Agreement, Ms. Ferris was interested in having
20 Fantagraphics publish Monsters Book 2 if suitable terms could be reached. Ms. Ferris lacks
21 sufficient information to admit or deny the remaining allegations in paragraph 20, and on that basis
22 denies them.

23 21. Ms. Ferris admits that her progress on Monsters Book 2 was hampered at times by
24 her mental and/or physical health, the grueling publicity schedule Fantagraphics demanded for
25 Monsters Book 1, Ms. Ferris' efforts to assist with the foreign language versions of Monsters Book
26 1, a defective computer and on her need to generate other income. It was also based on Ms. Ferris'

1 growing distrust for Fantagraphics and her concerns about the way Fantagraphics was treating her.
 2 Ms. Ferris does not recall when she, her agent, or her attorneys first denied that Monsters Book 2
 3 is covered by the Publishing Agreement. As explained more fully below in Ms. Ferris’
 4 counterclaims, as time progressed Ms. Ferris became increasingly suspicious that Fantagraphics
 5 was underpaying her and lying about the revenue it was gaining from Monsters Book 1. When Ms.
 6 Ferris requested an audit under Section 9 of the Publishing Agreement, which she was entitled to
 7 do, Fantagraphics refused to open its books to her. The friction between Ms. Ferris and
 8 Fantagraphics has imposed and continues to impose a significant toll on Ms. Ferris—financially
 9 and mentally—that has impacted her progress on Monsters Book 2. Ms. Ferris lacks sufficient
 10 information to admit or deny the remaining allegations in paragraph 21, and on that basis denies
 11 them.

12 22. Ms. Ferris denies that any of the correspondence cited in paragraph 22—to the
 13 extent that correspondence is accurately transcribed—confirms Fantagraphics’ “rendition of the
 14 facts.” It shows only that the parties thought for a time that Fantagraphics would publish Book 2
 15 but is silent as to the terms of that publication. In addition, the cited correspondence confirms that
 16 Monsters Book 1 and Monsters Book 2 are independent works, and that Monsters Book 2 was not
 17 yet completed. Only one book, Monsters Book 1, was covered by the Publishing Agreement.

18 23. Ms. Ferris denies that any of the correspondence cited in paragraph 23—to the
 19 extent that correspondence is accurately transcribed—supports Fantagraphics’ allegation that the
 20 Publishing Agreement covers Monsters Book 2. Ms. Ferris lacks sufficient information to admit
 21 or deny the remaining allegations in paragraph 23, and on that basis denies them.

22 24. Ms. Ferris admits that her lawyers sent the communication referenced in paragraph
 23 24. That letter, which is clearly marked “CONFIDENTIAL FOR SETTLEMENT PURPOSES
 24 ONLY (FRE 408),” is protected by Federal Rule of Evidence 408, and not admissible to “prove
 25 or disprove the validity” of any claim. As such, paragraph 24 should be stricken in its entirety. *See*
 26 *Ogundele v. Girl Scouts-Arizona Cactus Pine Council, Inc.*, No. CV-10-1013-PHS-GMS, 2011

1 WL 1770784, at *9 (D. Ariz. May 10, 2011). Separately, Ms. Ferris denies that the correspondence
2 cited in paragraph 24 supports Fantagraphics’ allegation that the Publishing Agreement covers
3 Monsters Book 2. Ms. Ferris denies that the word “sequel” was never before mentioned by the
4 parties—Ms. Ferris repeatedly used the word “sequel” to describe Monsters Book 2. Except as
5 expressly admitted, Ms. Ferris denies the remaining allegations in paragraph 24.

6 25. Ms. Ferris admits that her lawyers sent the communication referenced in paragraph
7 25. That letter, which is clearly marked “CONFIDENTIAL FOR SETTLEMENT PURPOSES
8 ONLY (FRE 408),” is protected by Federal Rule of Evidence 408, so is not admissible to “prove
9 or disprove the validity” of any claim. As such, paragraph 25 should be stricken in its entirety. *See*
10 *Ogundele v. Girl Scouts-Arizona Cactus Pine Council, Inc.*, No. CV-10-1013-PHS-GMS, 2011
11 WL 1770784, at *9 (D. Ariz. May 10, 2011). Separately, Ms. Ferris denies that the correspondence
12 referenced in paragraph 25 supports Fantagraphics’ allegation that the Publishing Agreement
13 covers Monsters Book 2. Ms. Ferris denies that the word “sequel” was never used to describe
14 Monsters Book 2. Except as expressly admitted, Ms. Ferris denies the remaining allegations in
15 paragraph 25.

16 26. Ms. Ferris admits that her lawyers sent the communication described in paragraph
17 26. That letter, which is clearly marked “CONFIDENTIAL FOR SETTLEMENT PURPOSES
18 ONLY (FRE 408),” is protected by Federal Rule of Evidence 408, and not admissible to “prove
19 or disprove the validity” of any claim. As such, paragraph 26 should be stricken in its entirety. *See*
20 *Ogundele v. Girl Scouts-Arizona Cactus Pine Council, Inc.*, No. CV-10-1013-PHS-GMS, 2011
21 WL 1770784, at *9 (D. Ariz. May 10, 2011). Separately, Ms. Ferris denies that the correspondence
22 referenced in paragraph 26 supports Fantagraphics’ allegation that the Publishing Agreement
23 covers Monsters Book 2. Except as expressly admitted, Ms. Ferris denies the remaining allegations
24 in paragraph 26.

25 27. Ms. Ferris admits that her lawyers sent the communication referenced in paragraph
26 27. That letter, which is clearly marked “CONFIDENTIAL FOR SETTLEMENT PURPOSES

1 ONLY (FRE 408),” is protected by Federal Rule of Evidence 408, and not admissible to “prove
 2 or disprove the validity” of any claim. As such, paragraph 27 should be stricken in its entirety. *See*
 3 *Ogundele v. Girl Scouts-Arizona Cactus Pine Council, Inc.*, No. CV-10-1013-PHS-GMS, 2011
 4 WL 1770784, at *9 (D. Ariz. May 10, 2011). Separately, Ms. Ferris denies that the correspondence
 5 referenced in paragraph 27—as excerpted incompletely and without context in that paragraph—
 6 supports Fantagraphics’ allegation that the Publishing Agreement covers Monsters Book 2. Except
 7 as expressly admitted, Ms. Ferris denies the remaining allegations in paragraph 27.

8 28. Ms. Ferris admits that her lawyers sent the communication described in paragraph
 9 28. That letter, which is clearly marked “CONFIDENTIAL FOR SETTLEMENT PURPOSES
 10 ONLY (FRE 408),” is protected by Federal Rule of Evidence 408, and not admissible to “prove
 11 or disprove the validity” of any claim. As such, paragraph 28 should be stricken in its entirety. *See*
 12 *Ogundele v. Girl Scouts-Arizona Cactus Pine Council, Inc.*, No. CV-10-1013-PHS-GMS, 2011
 13 WL 1770784, at *9 (D. Ariz. May 10, 2011). Separately, Ms. Ferris denies that the correspondence
 14 referenced in paragraph 28—as excerpted incompletely and without context in that paragraph—
 15 supports Fantagraphics’ allegation that the Publishing Agreement covers Monsters Book 2. Ms.
 16 Ferris lacks sufficient information to admit or deny the remaining allegations in paragraph 28, and
 17 on that basis denies them.

18 29. Ms. Ferris lacks sufficient information to admit or deny the remaining allegations
 19 in paragraph 29, and on that basis denies them.

20 30. Ms. Ferris denies that any material in Fantagraphics possession constitutes “the
 21 second half of MONSTERS.” Ms. Ferris denies that she submitted “the second half of
 22 MONSTERS” for publication in 2015. Ms. Ferris denies that the Publishing Agreement authorizes
 23 Fantagraphics to publish Monsters Book 2. Ms. Ferris denies that her consistent representations
 24 over many years that the Publishing Agreement does not cover Monsters Book 2 constitute a “last-
 25 minute claim.” Ms. Ferris lacks sufficient information to admit or deny the remaining allegations
 26 in paragraph 30, and on that basis denies them.

CAUSE OF ACTION FOR DECLARATORY JUDGMENT

31. In answering paragraph 31, Ms. Ferris incorporates by reference her responses to paragraphs 1–30 above. Except as specifically admitted, Ms. Ferris denies the remaining allegations in paragraph 1–30.

32. Paragraph 32 states legal conclusions to which no response is required. To the extent a response is required, Ms. Ferris admits the allegations in paragraph 32.

33. Ms. Ferris denies the allegations in paragraph 33.

RESPONSE TO PRAYER FOR RELIEF:

Ms. Ferris denies that Plaintiff is entitled to any declarative, substantive, procedural, punitive, statutory, or injunctive remedy or relief, including the relief referenced in Plaintiff's "Prayer for Relief" section of the Complaint, or any other relief whatsoever.

JURY TRIAL DEMAND

Ms. Ferris denies that Plaintiff is entitled to a trial by jury on its declaratory judgment claim.

DEFENSES AND AFFIRMATIVE DEFENSES

Ms. Ferris further responds to the Complaint by alleging the following defenses and affirmative defenses without assuming the burden of proof where such a burden is otherwise on the Plaintiff pursuant to applicable substantive or procedural law.

1. The harm alleged in the Complaint is not covered under the terms of the Publishing Agreement.

2. Plaintiff's claims are barred by Plaintiff's material misrepresentations.

3. Plaintiff's claims are barred by Ms. Ferris' good faith conduct.

4. Plaintiff's claims are barred by bad faith conduct of Plaintiff.

5. Plaintiff's claims are barred by the unclean hands of Plaintiff.

6. Plaintiff's claims are barred by Plaintiff's own breach of contract or obligations to Ms. Ferris.

7. Plaintiff's claims are barred by the doctrine of fraud.

8. Plaintiff's requested relief—essentially specific performance of a Contract that does not say what Plaintiff alleges it says—would violate the U.S. Constitution.

Reservation of Defenses

9. Ms. Ferris reserves the right to amend and/or supplement her Answer to assert any and all pertinent defenses ascertained through further investigation and discovery of this action. Ms. Ferris will rely on all defenses that may become available during discovery or trial.

WHEREFORE, Ms. Ferris requests that the Court find in her favor on Plaintiff's declaratory judgment claim; that judgment be entered against Plaintiff in connection with its Complaint; that judgment be entered in favor of Ms. Ferris; and that Ms. Ferris be awarded such other and further relief as the Court deems appropriate.

COUNTERCLAIMS

Ms. Ferris brings these counterclaims for breach of contract and declaratory judgment to get an accounting, recover what she is owed under the Publishing Agreement, and clarify formally that Fantagraphics has no rights to publish anything from Ms. Ferris except Monsters Book 1. In alleging these counterclaims, Ms. Ferris incorporates by reference her responses to paragraphs 1–30 above. Ms. Ferris further alleges as follows:

PARTIES

1. Counterclaimant Emil Ferris is an individual who resides and is domiciled in the state of Illinois.

2. On information and belief, counterdefendant Fantagraphics Books, Inc., is a Washington State corporation with its principal place of business within the Western District of Washington.

JURISDICTION & VENUE

3. This is an action for breach of contract under Washington state law and declaratory judgment under 28 U.S.C. § 2201(a).

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 2201(a) and 28 U.S.C. § 1331.

5. Venue for the counterclaims is proper in this District pursuant to 28 U.S.C. § 1391(b) because counterdefendant Fantagraphics is a resident of this district.

FACTUAL BACKGROUND

A. *My Favorite Thing Is Monsters Book 1 Was an Instant Success.*

6. Monsters Book 1 is a graphic novel that tells the story of ten-year old Karen Reyes' effort to investigate the death of her beloved neighbor, Anka, a holocaust survivor. Anka's death was ruled a suicide, but Karen is convinced Anka was murdered. This "whodunnit" storyline is set against the social turmoil of 1960s Chicago. It is also a coming of age story told through Karen's notebook, where Karen documents clues to Anka's death. Karen illustrates the pages of her

notebook, drawing herself as a werewolf and depicting those with whom she comes in contact as monsters. Karen's investigation of Anka's death requires her to confront individual and state-sponsored evil, antisemitism, racism, homophobia, and misogyny. Karen also takes the reader back in time to Anka's experiences as a holocaust victim.

7. Monsters Book 1 is a work of art. Ms. Ferris eschews the panel storytelling format that is typical of graphic novels in favor of intricate, delicate, and detailed full-page pen and ink drawings. Every image and word are hand drawn by Ms. Ferris. *See, e.g., Figure 1.*

Figure 1



© Emil Ferris

8. Monsters Book 1 is Ms. Ferris' first published work of any kind and is an astounding achievement for Ms. Ferris professionally and personally. Ms. Ferris overcame great personal challenges to complete Monsters Book 1. At the age of 40, Ms. Ferris contracted West Nile virus and experienced partial paralysis. It took Ms. Ferris many years to recover, and to this day she does not have full dexterity in her drawing hand. Ms. Ferris started working on Monsters Book 1 during her recovery from West Nile virus while she was a student at the School of the Art Institute of Chicago. The book took Ms. Ferris more than five years to complete.

9. At completion, the original manuscript for Monsters was more than 600 pages long. But Ms. Ferris knew the 600-page manuscript did not include the true end to Karen's story. She anticipated writing a second book that would complete Karen's narrative.

10. In 2015 and 2016, Ms. Ferris worked with a literary agent, Holly Bemiss, to publish Monsters Book 1. The publisher was Gary Groth of Fantagraphics. Ms. Ferris and Fantagraphics signed the Publishing Agreement on January 13, 2016. *See* Exhibit A.

11. Ms. Ferris performed her obligation under the Publishing Agreement by delivering Monsters Book 1 to Fantagraphics in time for a 2016 publication. Ex. A § 5. The original publication date for Monsters Book 1 was October 2016, to coincide with Halloween, but shipping delays pushed out the publication date until early 2017.

12. Monsters Book 1 was finally published on February 14, 2017.¹ Fantagraphics ordered an initial print run of 10,000 copies, with 30,000 reprints in April 2017. For Fantagraphics, this was "the largest [reprint order] in company history."² Fantagraphics ordered a third printing of 25,000 books and a fourth printing of 17,000 books.

13. Monsters Book 1 was enormously successful. It appeared on the *Publishers Weekly* graphic novel best seller list and was included on the New York Times "Times Critics' Top Books

¹ Ferris holds a copyright registration for Monsters Book 1. The registration number is TX 8-960-229.

² Sharon Kennedy Wynne, *Defying the norms of graphic novels, 'My Favorite Thing is Monsters' dazzles critics of all stripes*, TAMPA BAY TIMES (May 16, 2017), <https://www.tampabay.com/features/books/defying-the-norms-of-graphic-novels-my-favorite-thing-is-monsters-dazzles/2324115/>.

of 2017.”³ Ms. Ferris was featured on NPR’s “Fresh Air” with Terry Gross, and Art Spiegelman, creator of *Maus*, called her “one of the most important comic artists of our time.”⁴ Ms. Ferris and the book received many awards, including 2017 Ignaz Awards for “Outstanding Artist” and “Outstanding Graphic Novel;” and three Eisner Awards for “Best Graphic Album—New,” “Best Writer/Artist,” and “Best Coloring.” Ms. Ferris received awards abroad as well, including a 2020 Max and Moritz award in Germany (Germany’s top award for graphic novels), a 2019 Fauve d’Or “Best Graphic Novel” award in France, and a 2018 Gran Guinigi “Best Graphic Novel” award in Italy. Ferris was recognized with, among other awards and honors, a residency at the Louvre in 2019. She was also named a Guggenheim Fellow in 2021.

B. Monsters Book 2 Is Not Covered by the Publishing Agreement.

14. Holly Bemiss, Ms. Ferris’ agent, sent Fantagraphics the entire 600-page manuscript for Monsters Book 1 in 2016. Ms. Ferris always intended Monsters would be a two-book series. But Fantagraphics contractually agreed to publish only a single book, and Ms. Ferris worked to trim the 600-page manuscript into Monsters Book 1. Notably, Fantagraphics did not simply cut the manuscript in half and publish only the first portion. If it had, it would not have waited four years for Ms. Ferris to deliver Monsters Book 2—it would already have had Monsters Book 2. The remnant pages left over from Monsters Book 1 are not Monsters Book 2.

15. Fantagraphics’ threats to publish these remnants would clearly violate Ms. Ferris’ copyrights and are a transparent effort to bully Ms. Ferris into giving them what they want but cannot legally claim. Publishing this draft work would also violate Ferris’ artistic integrity and

³ Dwight Garner et. al., *Times Critics’ Top Books of 2017*, N. Y. TIMES (Dec. 7, 2017), <https://web.archive.org/web/20180105180348/https://www.nytimes.com/2017/12/07/books/critics-favorite-books-2017.html>.

⁴ Nat’l Pub. Radio, *In ‘Monsters,’ Graphic Novelist Emil Ferris Embraces the Darkness Within* (March 30, 2017), <https://www.npr.org/2017/03/30/522034367/in-monsters-graphic-novelist-emil-ferris-embraces-the-darkness-within>; Dana Jennings, *First, Emil Ferris Was Paralyzed. Then Her Book Got Lost At Sea*, N.Y. TIMES (Feb. 17, 2017), <https://www.nytimes.com/2017/02/17/arts/design/first-emil-ferris-was-paralyzed-then-her-book-got-lost-at-sea.html>.

1 damage her reputation as a writer. Separately, forcing her to work with Fantagraphics to write and
 2 publish Book 2 would violate the U.S. Constitution.⁵

3 16. At the time the agreement was entered, Fantagraphics did not commit to a two-book
 4 deal, nor would it have been expected to—Ms. Ferris was a first-time author with an unproven
 5 record. After the parties entered the agreement, they began to discuss publishing a second volume
 6 together, but they never amended the existing contract or entered a new one for Monsters Book 2
 7 to bind each other legally.

8 17. The Publishing Agreement does not cover two books—it simply does not say what
 9 Fantagraphics wants it to say. The Agreement defines book in the singular, Ex. A § 1(a), and it
 10 indicates that the period of agreement continues “as long as the **book**” is in print. *Id.* § 2. It
 11 references “**the Book**” throughout—in singular.

12 18. The Publishing Agreement also includes only one delivery date and one publication
 13 date. *Id.* § 5. It says that Ms. Ferris will deliver “The Work to be included in the Book according
 14 to a mutually agreed upon schedule.” *Id.* The Work—singular—will be published “within 24
 15 months of the date of this Agreement.” *Id.* If the Publishing Agreement covered two books, as
 16 Fantagraphics contends, it would specify two delivery dates and a schedule that envisioned two
 17 publishing dates.

18 19. The Publishing Agreement also provides for only one, \$12,000 advance against
 19 royalties, which again would not make sense if the Agreement covered two separate books. Ex. A
 20 § 4(a).

21 20. Importantly, the Publishing Agreement never mentions a “Book 2,” “Volume 2,” a
 22 Monsters sequel, or any subsequent work.

23
 24 ⁵ Specific performance of contracts is disfavored given the Constitutional concerns prohibiting involuntary
 25 servitude. *See* RESTATEMENT (SECOND) OF CONTRACTS § 367(1) (1981) (“A promise to render personal
 26 service will not be specifically enforced . . .”); *see also* Randy E. Barnett, CONTRACTS: CASES AND DOCTRINE
 224–30 (3d ed. 2003) (discussing specific performance and the Thirteenth Amendment); JOHN D. CALAMARI &
 Joseph M. Perillo, THE LAW OF CONTRACTS 617 (4th ed. 1998) (same); Howard O. Hunter, MODERN LAW OF
 CONTRACTS ¶ 6.05, at 6-27 to -30 (1986) (same).

21. The Publishing Agreement requires that any amendments to the Agreement be in writing and signed by both parties. Ex. A § Misc. (c). Clearly the parties did not memorialize any of the specifics with regard to Monsters Book 2 that would form the basis for a binding publishing agreement.

22. The Publishing Agreement also contains a merger clause, which provides that the “Agreement contains the entire understanding of the parties with respect to its subject matter. Any and all representations or agreements by any agent or representative of either party to the contrary shall be of no effect.” Ex. A § Misc. (e).

23. Contemporaneous evidence confirms that the Publishing Agreement covered only one book, Monsters Book 1.

24. Ms. Ferris had discussions with her agent, Holly Bemiss, about Monsters Book 2 around the time the Parties entered into the Publishing Agreement for Monsters Book 1. Ms. Bemiss stated that Fantagraphics would treat Ms. Ferris fairly in publishing Monsters Book 1 in part to ensure Ms. Ferris would ultimately agree to allow Fantagraphics to publish Monsters Book 2 as well.

25. On information and belief, Fantagraphics knew that the Monsters Book 1 remnant was not Monsters Book 2, and that Monsters Book 2 did not exist at the time the Parties signed the Publishing Agreement. For example, Ms. Ferris launched a GoFundMe Campaign three days after the original publication date for Monsters Book 1 in November 2016 to raise money for drafting Monsters Book 2. In exchange for a donation, Ms. Ferris offered to draw donors as minor characters in Monsters Book 2.⁶ Fantagraphics knew about the GoFundMe page and therefore understood that Monsters Book 2 was still incomplete in the fall of 2016.

26. In addition, emails from 2017 through late 2018 between Ms. Ferris, Ms. Bemiss, and Fantagraphics confirm that Fantagraphics understood Monsters Book 2 was not yet finished.

⁶ Emil Ferris, *You Can Be In My Graphic Novel!*, GOFUNDME, <https://www.gofundme.com/f/beinagraphicnovel>.

1 For instance, on May 23, 2018, Mr. Groth told Ms. Ferris that they could not list Monsters Book
 2 2 in their catalogue until it was “100% done” and that “waiting until an author finishes the book”
 3 was “standard practice.” He confirmed in the same email his understanding that Ms. Ferris’ work
 4 on Book 2 involved more than polishing. He wrote: “If you’d like any feedback regarding the
 5 narrative, the plot, page sequencing, etc., please let me know.” And, on October 15, 2018, Ms.
 6 Bemiss wrote to Mr. Groth: “Emil (cc’d here) and I were wondering why this statement dated
 7 2/5/2018 attached below records the sale of My Favorite Thing is Monsters Book 2? We find this
 8 curious as Book 2 does not presently exist.” In 2020, Ms. Ferris again emailed Fantagraphics
 9 asking “why on this statement you have sent me that is dated 02-19-2020, do I see something
 10 called Book2 being sold by you when I have not authorized the sale of anything called Book2?”
 11 Ms. Ferris reminded Fantagraphics that “our contract does not include any provision for a ‘Book
 12 2’” and asked them to cancel all payments she had received for “Book 2.”

13 27. Ms. Ferris’s interviews and social media posts document the struggles she has had
 14 completing Monsters Book 2. In an October of 2017 interview, in response to a question regarding
 15 whether Monsters Book 2 would be published in March of 2018, she stated that “God willing” it
 16 would come out the following year. In an October of 2020 interview, Ms. Ferris stated that she
 17 had experienced disappointments while writing Monsters 2 that gave her “writers block.” As
 18 recently as January 2021, Ms. Ferris shared on her Instagram: “unfortunately there is no second
 19 book at this time and consequently nobody should be taking money from anyone . . .” in exchange
 20 for Monsters Book 2.

21 28. Consistent with these statements, Ms. Ferris has continued to work on Monsters
 22 Book 2 over the past four years. She originally hoped to deliver the finished book to Fantagraphics
 23 in 2017, but the process of crafting, writing, and drawing the end to Karen’s story has taken
 24 Ms. Ferris longer than anticipated. Fantagraphics also demanded Ms. Ferris spend her time
 25 promoting Monsters Book 1, which took her away from writing Monsters Book 2. For example,
 26 Ms. Ferris travelled for six international book tours; sat for dozens of radio and newspaper

1 interviews; and attended in-person book signings and events, all of which took a substantial
2 amount of Ms. Ferris' time. Ms. Ferris was also required to prepare Monsters Book 1 for foreign
3 sales, which included redrawing significant portions of the book to properly remove embedded
4 text for translation. The time she spent promoting Monsters Book 1 and preparing it for foreign
5 sales was time she did not spend writing Monsters Book 2. Ms. Ferris also has lingering mobility
6 issues associated with West Nile virus, including ongoing partial paralysis in her right hand, that
7 limit the hours she can work each day.

8 29. Her significant challenges trying to get an accounting from Fantagraphics have
9 further slowed her progress. Ms. Ferris is informed and believes that Fantagraphics has persistently
10 underpaid her royalties on Monsters Book 1, requiring Ms. Ferris to pick up odd jobs to support
11 herself and her daughter. This took away from the time she could commit to Monsters Book 2. In
12 addition, Fantagraphics' publishing errors on foreign language versions of Monsters Book 1
13 required Ms. Ferris to dedicate substantial time to those volumes, again, taking her away from
14 finishing Monsters Book 2. Nevertheless, as a sign of good faith that she was working on Monsters
15 Book 2, Ms. Ferris provided Fantagraphics with approximately 40 non-sequential pages of the
16 work. To date, Ms. Ferris is still drafting Monsters Book 2 and has not delivered it to Fantagraphics
17 for publication.

18 30. Despite not having Monsters Book 2 in hand, and despite not having the contractual
19 rights to Monsters Book 2, Fantagraphics has already sold copies of the book. Ms. Ferris
20 discovered this when examining her royalty statements. Ms. Ferris has refused payments from
21 Fantagraphics for Monsters Book 2, including pre-sale payments from Amazon.com, because
22 Monsters Book 2 is not complete, and Ms. Ferris has not yet determined whether Fantagraphics
23 will be its publisher.

24 31. Ms. Ferris' understanding is and has always been that Monsters Book 2 was not
25 covered by the Publishing Agreement.
26

C. Fantagraphics Breached the Publishing Agreement.

32. The 2016 Publishing Agreement governs Ms. Ferris and Fantagraphics' rights regarding publication and distribution of Monsters Book 1.

33. Ms. Ferris performed under the Publishing Agreement by delivering Monsters Book 1 to Fantagraphics in time for a 2016 publication date. Ex. A § 5. Fantagraphics has not performed its ongoing obligations. Rather, it breached the Publishing Agreement by underpaying Ms. Ferris royalties, sending late and incomplete royalty statements, distributing Monsters Book 1 outside of the permitted geographic territory, and obstructing Ms. Ferris' legal right to audit its records.

1. Fantagraphics Underpays Ms. Ferris Royalties

34. The Publishing Agreement requires Fantagraphics to pay Ms. Ferris royalties. On all copies of the book sold by Fantagraphics, Ms. Ferris earns 8% of the retail price on all copies of each book up to 25,000 sold, and 10% of the retail price on all copies of each book sold in excess of 25,000. Ex. A § 4. These royalty figures are "based on the Publisher's suggested retail list price for the Book." *Id.*

35. Shortly after Ms. Ferris began receiving royalty statements from Fantagraphics, she suspected Fantagraphics was underpaying her. She first contacted Fantagraphics in 2017 by email, through her agent Ms. Bemiss, to confirm its record keeping relating to payments and sales. Mr. Groth responded, apparently frustrated that Ms. Ferris and Ms. Bemiss would approach him with questions about Fantagraphics' accounting practices.

36. Ms. Bemiss continued to press Fantagraphics for information on lower-than-expected payments throughout 2018. For example, Ms. Bemiss emailed Mr. Groth in August 2018 explaining that Ms. Ferris would be "very disappointed--and frankly also suspicious" about a

1 \$13,000 royalty payment following Monsters Book 1's stunning success in the first half of that
 2 year (by one public estimate, retail sales of the book topped \$2.8 million during that same period).⁷

3 37. In the same exchange, Ms. Bemiss requested information from Mr. Groth regarding
 4 how many books Fantagraphics sold and through what channels so Ms. Ferris could confirm the
 5 amounts in the royalty statements, as was Ms. Ferris' right under the Publishing Agreement. Ex.
 6 A § 9 (relating to an audit). Mr. Groth did not provide the information Ms. Ferris requested.

7 38. The Publishing Agreement requires Fantagraphics to "keep full and accurate Book
 8 of account and other documents and materials relating to this Agreement . . ." Ex. A § 9.
 9 Fantagraphics has refused to tell Ms. Ferris precisely how many copies of Monsters Book 1
 10 Fantagraphics has sold and at what price, instead providing her varying estimates that changed
 11 depending on who at Fantagraphics was doing the reporting. Fantagraphics refusal to provide this
 12 information is a breach of § 9.

13 39. Fantagraphics likewise violated the Publishing Agreement by underpaying
 14 Ms. Ferris for e-book sales. Section 3(a)(vii) of the Publishing Agreement provides that
 15 Fantagraphics will pay Ms. Ferris 50% of the amount received from e-book sales. Ms. Ferris was
 16 never paid more than 25% for royalties from e-book sales. The royalty statement excerpted below
 17 is just one example:

18
 19
 20
 21
 22
 23
 24
 25
 26 ⁷ Milton Griep, *70,000 Copies of 'My Favorite Thing Is Monsters,'* ICv2 (May 18, 2017),
<https://icv2.com/articles/news/view/37545/70-000-copies-my-favorite-things-is-monsters>.

Figure 2

To:

Emil Ferris

Fantagraphics Books Inc.

7563 Lake City Way NE

Seattle, WA, 98115

(206)524.1967

1.800.657.1100

ROYALTY STATEMENT

Statement As Of: 1/14/2019

Vendor ID: 8439

Date Printed: 1/14/2019

Page: 1

Tax ID: XXX-XX-5887

ID: 6596 ISBN: qmftim Title: E My Favorite Thing is Monsters Author: Ferris List Price: 9.00 Pub Date: 00/00/00

Earnings 7/1/201 Thru 12/31/201

Units Sold	Value Sold	Pricing	Royalty Type	Sales Level	Discount	Royalty Pcnt	Roy/Unit	Roy/Calc	Royalty Earned
1,324	8,351.55	Net				25.000%			2,087.95
1,324	8,351.55							Total Earned:	2,087.95
								Your Percentage:	85.000%
								Net Earned:	1,774.76

40. Fantagraphics repeatedly underpaid Ms. Ferris for foreign book sales—as recently as this year, Fantagraphics sent Ms. Ferris a royalty statement showing Ms. Ferris received 15% of 70% for Italian sales (when her royalty rate is 85% of 70%). Fantagraphics ultimately corrected this error upon Ms. Bemiss’ and Ms. Ferris’ request, but the payment shows a larger practice of Fantagraphics manipulating and underpaying royalties.

41. On information and belief, Fantagraphics also failed to properly account for Fantagraphics sale and licensing of the book to libraries, including online libraries such as Hoopla. This further reduced Ms. Ferris’ royalty payments.

2. Fantagraphics Provides Late and Incomplete Statements

42. Fantagraphics also breached the Publishing Agreement by delivering late and incomplete royalty statements. According to Section 8(a) of the Agreement, the “accounting period” is “the first six months or last six months of the calendar year (*i.e.*, January through June, and July through September).” Further, Fantagraphics “shall furnish [Ms. Ferris], within 90 days following the end of each accounting period, an accounting of the royalties due to [Ms. Ferris] for such an accounting period.” According to Section 8(c), Fantagraphics “shall pay [Ms. Ferris] and

Agent all royalties due to [Ms. Ferris] and Agent for any accounting period at the time it renders its accounting for such period.”

43. Fantagraphics frequently failed to abide by this schedule. For example, the below royalty statement was a full four months late: Per the Publishing Agreement, the royalty statement for the January 1, 2019 through June 30, 2019 accounting period should have issued by October 29, 2019. Instead of following this six-month schedule, Fantagraphics waited until February 2020 to issue a royalty statement for the entire year, January 1, 2019 through December 31, 2019, effectively missing the October payment date.

To: Fantagraphics Books Inc.
 Email: Ferris
 7563 Lake City Way NE
 Seattle, WA, 98115
 (206)524.1967
 1.800.657.1100

ROYALTY STATEMENT
 Statement As Of: 2/19/2020
 Vendor ID: 8439
 Date Printed: 2/19/2020
 Page: 2

ID: 5725 ISBN: 978-1-60699-959-2 Title: My Favorite Thing is Monsters Author: Ferris List Price: 39.99 Pub Date: 2/13/2017

Earnings 1/1/2019 Thru 12/31/2019

Units Sold	Value Sold	Pricing	Royalty Type	Sales Level	Discount	Royalty Pct	Rev/Unit	Rev/Calc	Royalty Earned
6,179	92,834.00	Net			60.00%	10.000%			9,283.40
1,931	32,380.79	Retail		25,001	59.00%	8.000%			6,142.42
130	4,694.15	Retail		25,001	49.00%	10.000%			519.96
8,240	129,908.94								
								Total Earned:	15,945.78
								Your Percentage:	85.000%
								Net Earned:	13,553.91

44. In addition, Ms. Ferris never received royalty statements for the three-month period from July 1, 2017 through September 30, 2017, even though 2017 was the highest grossing year for Monsters Book 1. Ms. Ferris has not received an explanation for these missing months, despite requesting such information.

3. Fantagraphics Distributes Unauthorized Reprints.

45. Fantagraphics also authorized third parties to reprint Monsters Book 1 on demand without Ms. Ferris’ approval. Section 3(a)(iii) of the Publishing Agreement permits Fantagraphics to “[l]icense publication of a reprint edition by another publisher,” only if “approved by the author.” On information and belief, Fantagraphics worked with other publishers, including but not limited to Ingram—a publishing and print on demand company—to publish unauthorized copies

1 of Monsters Book 1. On information and belief, this allowed Fantagraphics to sell Monsters Book
2 1 without providing Ms. Ferris royalties under the Publishing Agreement.

3 46. Fantagraphics has also breached the Publishing Agreement by selling English
4 versions of Monsters Book 1 outside of the territory specified in the Publishing Agreement.
5 Fantagraphics has the right to print, publish, and sell the English version of Monsters Book 1 only
6 in the United States of America, the Philippine Republic, Canada, and the British Commonwealth.
7 Ex. A § 3(a). On information and belief, Fantagraphics violated this limitation by selling or
8 authorizing for sale English language versions of Monsters Book 1 in Spain, Mexico, Portugal,
9 Brazil, Germany, the Netherlands, the United Arab Emirates, France, Italy, Turkey, Korea, Japan,
10 and China.

11 4. Fantagraphics Obstructed an Audit.

12 47. Fantagraphics also breached the Publishing Agreement by failing to agree to an
13 audit, as required by Section 9. Section 9 of the Publishing Agreement requires Fantagraphics to
14 “keep full and accurate Book of account and other documents and materials relating to this
15 Agreement . . .” Ex. A. § 9. It gives Ms. Ferris the right to audit Fantagraphics’ books “upon giving
16 reasonable notice.” *Id.* Ms. Ferris indicated to Fantagraphics as early as 2018 that she would like
17 more information about its accounting practices.

18 48. Ms. Ferris requested multiple audits, only to be repeatedly rebuffed by
19 Fantagraphics in violation of Section 9 of the Publishing Agreement.

20 49. In 2018, Ms. Ferris retained the Author’s Guild to conduct an electronic audit, as
21 was their customary practice. Fantagraphics refused to allow electronic review and insisted instead
22 that the New York auditors fly to Seattle for an in-person review of Fantagraphics’ records,
23 something the Publishing Agreement does not require. Ms. Ferris believed this was an attempt to
24 increase the cost of the audit for her.

25 50. Ms. Ferris attempted to move forward with an auditor on the west coast, but
26 Fantagraphics insisted on unreasonable terms in a non-disclosure agreement (NDA) and that Ms.

1 Ferris herself sign an NDA, something that Section 9 of the Publishing Agreement does not
2 require. Most recently, Ms. Ferris demanded an audit in a letter to Fantagraphics dated January
3 2021. Ms. Ferris hired the accounting firm KPMG to conduct the audit, intending that KPMG
4 would provide a thorough and objective review of Fantagraphics' accounting practices.

5 51. Fantagraphics refused to grant KPMG access to its books, instead insisting on an
6 NDA that, among other things, would prevent KPMG from disclosing to Ms. Ferris any
7 information discovered in the audit other than whether Fantagraphics underpaid Ms. Ferris. The
8 Publishing Agreement does not permit Fantagraphics to impose these onerous terms. In fact, the
9 Publishing Agreement expressly allows Ms. Ferris personally to review Fantagraphics' records if
10 she so chooses: "*The Author* or [her] duly authorized agent or representative . . . shall have the
11 right . . . to examine . . . such Book, documents and other material, and shall be at liberty to make
12 copies of all or any part of such Book, documents and other material." Ex. A § 9 (emphasis added).

13 52. Fantagraphics' attorney—Ken Norwick—communicated directly with KPMG on
14 the audit, doubling down on Fantagraphics' position that it would not agree to KPMG's standard
15 audit terms (including its non-disclosure terms), and instead demanding the unreasonable NDA
16 described above. Mr. Norwick closed his email to KPMG by demanding a mediation on the NDA,
17 an entirely unreasonable request given that the Publishing Agreement does not provide for an NDA
18 in the first place. Mr. Norwick's involvement had the effect of further running up Ms. Ferris' bills
19 associated with the attempted audit. Ultimately, rather than allow the audit, Fantagraphics filed
20 this lawsuit.

21 53. The foregoing provides just a few examples of Fantagraphics breaches. Ms. Ferris
22 expects she will uncover additional violations of the Publishing Agreement as this litigation
23 proceeds.
24
25
26

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Breach of Contract

54. Ms. Ferris realleges and incorporates by reference the allegations in the preceding paragraphs and her Answer to Fantagraphics' Complaint as if fully set forth herein.

55. Ms. Ferris performed her obligations under the Publishing Agreement by delivering Monsters Book 1 to Fantagraphics for publication.

56. Fantagraphics willfully, continuously, and materially breached the Publishing Agreement by engaging in the conduct described above, among other things, by:

- a. Failing to keep "full and accurate" accountings of documents and materials relating to the Publishing Agreement, in violation of Section 9 of the Publishing Agreement. Ex. A § 9.
- b. On information and belief, failing to account for library book sales, among others.
- c. Underpaying Ms. Ferris for e-book sales, in violation of Section 3(a) of the Publishing Agreement. Ex. A § 3(a).
- d. Working with other publishers to publish unauthorized copies of Monsters Book 1, in violation of Section 3(a)(iii) of the Publishing Agreement. Ex. A § 3(a).
- e. Selling English versions of Monsters Book 1 outside of the specified territory, in violation of Section 3(a) of the Publishing Agreement. Ex. A § 3(a).
- f. Refusing to permit an audit, as required by Section 9. Ex. A § 9.
- g. Failing to pay Ms. Ferris according to the schedule laid out in Section 8 of the Publishing Agreement. Ex. A § 8.

h. Refusing to provide a royalty statement for the time period from July 1, 2017 through September 30, 2017. *Id.*

57. As a direct and proximate result of Fantagraphics' material breaches of the Publishing Agreement, Ms. Ferris has been and will continue to be harmed, thereby entitling Ms. Ferris to compensatory damages, an order requiring the audit, fees and costs, and/or other equitable relief against Fantagraphics.

SECOND CLAIM FOR RELIEF
Breach of the Covenant of Good Faith and Fair Dealing

58. Ms. Ferris realleges and incorporates by reference the allegations in the preceding paragraphs and in her Answer to Fantagraphics' Complaint as if fully set forth herein.

59. Under Washington law, every contract contains "an implied duty of good faith and fair dealing" that "obligates the parties to cooperate with each other so that each may obtain the full benefit of performance." *Rekhter v. State, Dep't of Soc. & Health Servs.*, 180 Wn.2d 102, 112–13, 323 P.3d 1036, 1041 (2014) (quoting *Badgett v. Sec. State Bank*, 116 Wn.2d 563, 569, 807 P.2d 356, 360 (1991)). The duty requires parties to a contract to "perform the obligations imposed by their agreement in good faith." *Poulsbo Grp., LLC v. Talon Dev., LLC*, 155 Wn. App. 339, 347, 229 P.3d 906, 910 (2010) (citing *Badgett*, 116 Wn.2d at 549).

60. Ms. Ferris formed a business relationship with Fantagraphics when it signed the Publishing Agreement. That Agreement authorized Fantagraphics to publish one book authored by Ms. Ferris: *Monsters Book 1*. It did not authorize Fantagraphics to publish any other works by Ms. Ferris, specifically, *Monsters Book 2*. Ms. Ferris reasonably expected Fantagraphics would not use the Publishing Agreement to try to extract from Ms. Ferris a work—*Monsters Book 2*—that is not covered by the Agreement.

61. Fantagraphics violated the duty of good faith and fair dealing by using the Agreement, which by its plain terms covers only one book, to threaten Ms. Ferris into giving Fantagraphics something to which they're not entitled, *Monsters Book 2*. Fantagraphics violated

1 the duty of good faith and fair dealing by threatening to publish the remnant of Monsters Book 1
2 as Monsters Book 2, which would harm Ms. Ferris' reputation and artistic integrity. Fantagraphics
3 violated the duty of good faith and fair dealing by filing this action in an attempt to coerce Ms.
4 Ferris into giving it the rights to publish Monsters Book 2, which is not covered by the Agreement.

5 62. The Agreement also obligated Fantagraphics to "keep full and accurate Book of
6 account and other documents and materials relating to this Agreement," and give Ms. Ferris access
7 to those records on request. Ex. A § 9. The purpose of this section was to ensure Fantagraphics'
8 accounting practices were accurate and transparent. Ms. Ferris reasonably expected that
9 Fantagraphics would comply with the letter and spirit of this section by agreeing to an audit without
10 unreasonable delay and/or conditions not provided for in the Agreement. Ms. Ferris did not expect
11 that Fantagraphics would make up excuses to thwart the audit.

12 63. Fantagraphics violated the duty of good faith and fair dealing by erecting
13 unnecessary and unreasonable barriers to the audits that Ms. Ferris requested, and to which she
14 was entitled under the Agreement. Among other unreasonable demands, Fantagraphics insisted
15 that KPMG agree to an expansive confidentiality term that would have prohibited KPMG from
16 disclosing key findings from the audit to Ms. Ferris.

17 64. Fantagraphics also acted in bad faith, and contrary to the spirit of transparency and
18 cooperation, when it requested KPMG agree to a mediation over the confidentiality term, a
19 mediation that would significantly drive up the price of the audit for Ms. Ferris. Fantagraphics
20 further acted in bad faith by filing this lawsuit while the parties were attempting to negotiate the
21 terms of the audit.

22 65. Fantagraphics violated the duty of good faith and fair dealing by repeatedly refusing
23 to tell Ms. Ferris precisely how many copies of Monsters Book 1 Fantagraphics sold, instead
24 providing her with unreliable estimates.

25 66. Fantagraphics' actions deprived Ms. Ferris of key benefits of her bargain under the
26 Publishing Agreement. Fantagraphics' actions go beyond mere breach of contract and amount to

1 bad faith and unfair dealing. Fantagraphics' has used the Publishing Agreement and its relationship
 2 with Ms. Ferris in an attempt to gain power and leverage over her for Fantagraphics' benefit. This
 3 violates Fantagraphics' duty of good faith and fair dealing.

4 67. Ms. Ferris is entitled to a judgment that Fantagraphics has breached the covenant
 5 of good faith and fair dealing in the Publishing Agreement, along with an injunction barring
 6 Fantagraphics from any further acts that frustrate the benefits Ms. Ferris is entitled to under that
 7 Publishing Agreement.

8 68. Ms. Ferris is also entitled to recover damages caused by Fantagraphics' breach.

9 **THIRD CLAIM FOR RELIEF**
 10 **Declaratory Judgment**

11 69. Ms. Ferris realleges and incorporates by reference the allegations in the preceding
 12 paragraphs and in her Answer to Fantagraphics' Complaint as if fully set forth herein.

13 70. As set out above, a valid and justiciable controversy has arisen and exists between
 14 Ms. Ferris and Fantagraphics regarding Monsters Book 2.

15 71. A judicial declaration concerning these matters is necessary and appropriate at this
 16 time so that Ms. Ferris can determine her rights and duties with respect to the remnants from the
 17 original Monsters manuscript. Absent such a declaration, Fantagraphics will continue to
 18 improperly assert that it has the right to publish Ms. Ferris' the remnants, and thereby cause Ms.
 19 Ferris irreparable injury and damage. Ms. Ferris has no other adequate remedy at law.

20 72. Accordingly, Ms. Ferris seeks a declaration that the Publishing Agreement covers
 21 only Book 1 and grants Fantagraphics no rights to Monsters Book 2 and no rights to publish any
 22 of the remnants from the Book 1 manuscript.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Ms. Ferris prays for the following relief:

25 1. An award to Ms. Ferris of damages, including but not limited to compensatory
 26 damages, and all other damages permitted by law.

2. A Declaration that Fantagraphics does not have the right to publish remnants from the original Monsters manuscript nor does it have the right to publish any other pages Ms. Ferris has submitted to Fantagraphics.

3. A Declaration that Fantagraphics has no rights to Monsters Book 2 when it is completed.

4. A Declaration that Ms. Ferris has complied with her obligations under the Publishing Agreement.

5. An order requiring Defendants to provide Ms. Ferris with a full and complete accounting with regard to Monsters Book 1 (and any unauthorized presales of Monsters Book 2), including all books and records to establish the total sales through all channels and from all sources for Monsters Book 1 and the royalties Ms. Ferris is owed.

6. A grant of such other and further equitable or legal relief as the Court deems proper.

MS. FERRIS' JURY DEMAND

Ms. Ferris hereby demands a jury trial as to all issues so triable.

Dated: August 23, 2021

By: s/ Lauren Watts Staniar

Judith B. Jennison (SBN WA 36463)

Lauren E. Staniar (SBN WA 48741)

Perkins Coie LLP

1201 Third Avenue, Suite 4900

Seattle, Washington 98101-3099

Telephone: 206.359.8000

Facsimile: 206.359.9000

JJennison@perkinscoie.com

LStaniar@perkinscoie.com

*Attorneys for Defendant and Counterclaimant
EMIL FERRIS*

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on August 23, 2021, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to the email addresses indicated on the Court's Electronic Mail Notice List.

Dated: August 23, 2021

s/ Lauren Watts Staniar
Lauren Watts Staniar